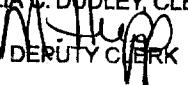


OCT 17 2011

JULIA C. DUDLEY, CLERK  
BY:   
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

UNITED STATES OF AMERICA

Case No. 4:05-cr-00011-1

v.

§ 2255 MEMORANDUM OPINION

WILLIE JUNIOR MCCAIN,  
Petitioner.

By: Hon. Jackson L. Kiser  
Senior United States District Judge

Petitioner Willie Junior McCain, a federal inmate proceeding pro se, filed a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. Upon review of the record, I conclude that the action must be dismissed as successive.

A district court may consider a second or successive § 2255 motion only upon specific certification from the Fourth Circuit Court of Appeals that the claims in the motion meet certain criteria. See 28 U.S.C. § 2255(h). Court records indicate that petitioner has previously filed a § 2255 motion regarding the same conviction and/or sentence. See McCain v. United States, No. 7:07-cv-00301, slip op. at 5 (W.D. Va. Apr. 29, 2008). Thus, petitioner's current § 2255 motion is a second or subsequent one under § 2255(h). As petitioner has not submitted any evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a second or successive § 2255 motion, the court must dismiss the action without prejudice. An appropriate order will issue this day.

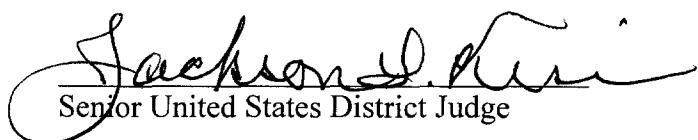
Petitioner is hereby advised of the procedure for obtaining certification from the Fourth Circuit Court of Appeals to have a district court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Fourth Circuit Court of Appeals with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244. A Fourth Circuit Court of Appeals form and instructions are available from the Fourth Circuit Court of Appeals at the following address:

Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St.,  
Richmond, VA 23219.

Based upon the court's finding that the petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a Certificate of Appealability is denied.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner and to counsel of record for the United States.

ENTER: This 17<sup>th</sup> day of October, 2011.

  
Senior United States District Judge